

D. Investigation and Reporting

241A. Premcor shall conduct a review of each of the three Premcor Refineries for the five (5) years prior to the Date of Lodging in an effort to identify any releases that may have been reportable under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004 or similar or corresponding state reporting regulations. Upon completion of this review, Premcor shall resolve its liability for violations of Section 103(a) of CERCLA and Section 304 of EPCRA or similar or corresponding state reporting regulations with respect to the events identified in its compliance review by completing the following activities no later than December 31, 2007:

- a. submit a CERCLA/EPCRA Compliance Review Report to EPA and Plaintiff-Intervenors that identifies potential violations of Section 103(a) of CERCLA and Section 304 of EPCRA or similar or corresponding state reporting regulations for which Premcor seeks a resolution of liability; and
- b. correct and/or update procedures to ensure compliance in future; and
- c. conduct CERCLA/EPCRA training for the environmental compliance staff at each of the three Premcor Refineries.

242. Beginning no later than ninety (90) days after the Date of Lodging, Premcor shall submit a report to EPA and the applicable EPA Regional Office within sixty (60) days following the end of each AG Flaring Incident, Hydrocarbon Flaring Incident or Tail Gas Incident at a Premcor Refinery. Such reports shall set forth the following information concerning the Incident (a "Root Cause Failure Analysis" or "RCFA"):

1. The date and time that the Incident started and ended. To the extent that the Incident involved multiple releases either within a twenty-four (24) hour period or within subsequent, contiguous, non-overlapping twenty-four (24) hour periods, Premcor shall set forth the starting and ending dates and times of each release;

2. An estimate of the quantity of SO₂ that was emitted and the calculations that were used to determine that quantity;
3. The steps, if any, that Premcor took to limit the duration and/or quantity of SO₂ emissions associated with the Incident;
4. A detailed analysis that sets forth the Root Cause of that Incident, to the extent determinable;
5. An analysis of the measures, if any, that are reasonably available to reduce the likelihood of a recurrence of the Incident resulting at the same refinery from the same Root Cause(s) in the future. The analysis shall discuss the alternatives, if any, that are reasonably available, the probable effectiveness and cost of the alternatives, and whether or not an outside consultant should be retained to assist in the analysis. Possible design, operational, and maintenance changes shall be evaluated.
6. Either a description of corrective action(s) under Paragraph 245 and, if not already completed, a schedule for its (their) implementation, including proposed commencement and completion dates, or an explanation that corrective action(s) is (are) not required;
7. For AG Flaring and Tail Gas Incidents at any Premcor refinery and for HC Flaring Incidents at the Port Arthur Refinery, a statement that:
 - a. Specifically identifies each of the grounds for stipulated penalties in Section XII.F of this Decree and describes whether or not such incident falls under any of those grounds;
 - b. Describes whether Paragraph 250 or 251 applies and why, or if such incident falls under Paragraph 252 of this Decree, describes whether subparagraph 252(a), (b), or (c) applies and why; and

- c. States whether or not Premcor asserts a defense to such incident, and if so, a description of such defense.
- 8. To the extent that investigations of the causes and/or possible corrective actions still are underway on the due date of the report, a statement of the anticipated date by which a follow-up report fully conforming to the requirements of this Paragraph 242 will be submitted; provided, however, that if Premcor, has not submitted a report or a series of reports containing the information required to be submitted under this paragraph within sixty (60) days (or such additional time as EPA may allow) after the due date for the initial report for any incident, the stipulated penalty provisions of Paragraph 260(d) shall apply for failure to timely submit the report. Nothing in this paragraph shall be deemed to excuse Premcor from its investigation, reporting, and corrective action obligations under this Part XII for any incident which occurs after another incident for which Premcor has requested an extension of time under this paragraph; and
- 9. To the extent that completion of the implementation of corrective action(s), if any, is not finalized at the time of the submission of the report required under this Paragraph 242, then, by no later than thirty (30) days after completion of the implementation of corrective action(s), Premcor shall submit a report identifying the corrective action(s) taken and the dates of commencement and completion of implementation.

243. With respect to HC Flaring Incidents and in lieu of analyzing possible corrective actions under Section XII.E and taking interim and/or long-term corrective action under that section for a Hydrocarbon Flaring Incident attributable to the startup or shutdown of a unit that Premcor previously analyzed under this Section XII.D, Premcor may identify such prior analysis when submitting the report required under Paragraph 242. Prior to the installation of a flare gas recovery system identified

under Paragraph 235(a) but only after notice to EPA under Paragraph 237, Premcor shall not be required to identify or implement corrective action(s) under Paragraphs 242 and 245, for HC Flaring Incidents unless more than 500 lbs. of SO₂ would have been released if such equipment had been installed and in use. If Premcor determines that the Hydrocarbon Flaring Incident is attributable solely to the combustion of refinery fuel gas that contains less than 162 ppm of H₂S, it shall so demonstrate in its report under Paragraph 242, and no further action shall be required for that Incident under this Section XII.D. In addition, or in the alternative, if Premcor determines that the Hydrocarbon Flaring Incident is attributable to the combustion of a stream or streams of Continuous or Intermittent Routinely-Generated Fuel Gases prior to Premcor's implementing actions to address such stream(s) when and as required by Paragraphs 235 and 238 but only after notice to EPA under Paragraph 237, it shall so demonstrate in its report under Paragraph 242 and no further action shall be required for that Incident under this Section XII.D. Notwithstanding Paragraph 242, Premcor may submit reports for Hydrocarbon Flaring Incidents at the Lima and Memphis Refineries as part of the Semi-annual Progress Reports required pursuant to Part XVI, but Premcor may not submit reports for Hydrocarbon Flaring Incidents at the Port Arthur Refinery as part of the Semi-annual Progress Reports.

244. With respect to Hydrocarbon Flaring Incidents occurring prior to certifying compliance under Paragraph 238 or 239, Premcor may prepare and submit a single RCFA for one or more Root Causes found by that analysis to routinely reoccur. Premcor shall inform EPA and the relevant Plaintiff-Intervener in that RCFA that it is electing to report only once on that (those) Root Cause(s) during the interim period. Unless EPA or the relevant Plaintiff-Intervener objects within thirty (30) days of receipt of the RCFA, such election shall be effective.

E. Corrective Action

245. In response to any Incident, Premcor, as expeditiously as reasonably practicable, shall take such interim and/or long-term corrective actions, if any, as are reasonable and consistent with

good engineering practice to minimize the likelihood of a recurrence of the Root Cause of that Incident.

245A. Premcor shall implement the following corrective action at the Port Arthur Refinery:

- (1) Delayed Coker 843 Wet Gas Compressor Reliability
 - a. Upgrade and install an adequate level of redundancy in the UPS supply serving critical compressor instrumentation and Fail Safe Control systems by December 31, 2009;
 - b. Develop for the coker's current cycle and for any subsequent cycle a task schedule similar to Foster Wheeler's task schedule for the 18-hour cycle by June 30, 2007;
- (2) SGRU 1242 Sats Gas Compressor Reliability
 - a. Retrofit advanced compressor surge and molecular weight control systems on the existing compressor by December 31, 2009;
 - b. Integrate the compressor control system with the unit DCS such that the cause of any compressor trip is identified and recorded by December 31, 2009;
- (3) Improve Amine Unit Process Control
 - a. Install redundant nozzles/level transmitter/indication on D-1250 Cold LP Separator OH KO Drum by December 31, 2009;
 - b. Relocate high level alarm on D1260 product stripper reflux drum by June 30, 2007;
 - c. Install redundant nozzles/level transmitter/indication on D-1260 product stripper reflux drum by December 31, 2009;
 - d. Install differential pressure transmitters across dP indicator on T-1530 at HCU 942 by June 30, 2007;

- e. Install redundant pressure indication on D-1290 Fractionator Feed Flash Drum (stripper bottoms) at HCU 942 by December 31, 2009;
 - f. Install redundant nozzles/level transmitter/indication on D-6850 C3/C4 Amine Settler by December 31, 2009;
 - g. Install redundant nozzles/level transmitter/indication on T-6880 Coker Sponge Absorber by December 31, 2009;
 - h. Automate purge on T-101 Pump-around at ATU 7841 by 06/30/2007;
- (4) Install oil skimming on T-4002 spent amine tank by December 31, 2009; and
 - (5) Revamp D-102 Amine/Oil Coalescer at ATU 7841 by December 31, 2007.

246. If EPA does not notify Premcor in writing within sixty (60) days of receipt of the report(s) required by Paragraph 242 that it objects to one or more aspects of Premcor's proposed corrective action(s), if any, and schedule(s) of implementation, if any, then that (those) action(s) and schedule(s) shall be deemed acceptable for purposes of compliance with Paragraph 245 of this Addendum.

247. EPA does not, by its agreement to the entry of this Addendum or by its failure to object to any corrective action that Premcor may take in the future, warrant or aver in any manner that any of Premcor's corrective actions in the future will result in compliance with the provisions of the Clean Air Act or its implementing regulations. Notwithstanding EPA's review of any plans, reports, corrective actions or procedures under this Part XII, Premcor shall remain solely responsible for non-compliance with the Clean Air Act and its implementing regulations. Nothing in this paragraph shall be construed as a waiver of EPA's rights under the Clean Air Act and its regulations for future violations of the Act or its regulations.

248. If EPA does object, in whole or in part, to Premcor's proposed corrective action(s) and/or its schedule(s) of implementation, or, where applicable, to the absence of such proposal(s) and/or schedule(s), it shall notify Premcor of that fact within sixty (60) days following receipt of the

RCFA required by Paragraph 242. EPA shall not, in such notice, amend or modify the schedule of activities identified in Paragraphs 228 and 245a. If EPA and Premcor cannot agree on the appropriate corrective action(s), if any, to be taken in response to a particular Incident, either Party may invoke the Dispute Resolution provisions of Part XXIII of the Addendum.

F. AG Flaring, Tail Gas Incidents, Port Arthur Hydrocarbon Flaring Incidents And Stipulated Penalties

249. The provisions of this Section XII.F are intended to implement the process outlined in the logic diagram attached hereto as Appendix F to this Addendum. These provisions shall be interpreted and construed, to the maximum extent feasible, to be consistent with that Appendix. However, in the event of a conflict between the language of those paragraphs and Appendix F, the language of those paragraphs shall control.

250. The stipulated penalty provisions of Paragraph 260(a) shall apply to any Acid Gas Flaring or Tail Gas Incident at a Premcor Refinery, or Hydrocarbon Flaring Incident at the Port Arthur Refinery ("Port Arthur HC Flaring Incident"), for which the Root Cause was one or more of the following acts, omissions, or events:

- a. Error resulting from careless operation by the personnel charged with the responsibility for the Sulfur Recovery Plant, TGU, or Upstream Process Units;
- b. Failure to follow written procedures;
- c. A failure of a part, equipment or system that is due to a failure by Premcor to operate and maintain that part, equipment or system in a manner consistent with good engineering practice;
- d. With respect to the Port Arthur Refinery, a HC Flaring Incident resulting from any of the following root causes once the corresponding corrective action has been completed pursuant to Paragraph 245a:
 - i. Short-term loss of power to critical Coker 843 Wet Gas Compressor instrumentation and fail safe control systems.

- ii. Trips of K-2300 A/B Wet Gas Compressors from surging because of low molecular weight feed streams.
- iii. Lack of capturing and recording operating data generated by SGRU 1242 compressor control system in the distributed control system does not allow troubleshooting the cause of a K-2300 A/B Wet Gas Compressors trips.
- iv. Process upset due to erroneous level indication in D-1250 Cold LP Separator OH KO Drum at HCU 942 caused by plugging of a nozzle.
- v. High elevation of the high level alarm point on D-1260 Product Stripper Reflux Drum at HCU 942 does not allow operators additional time to correct a rising level situation before drum overflow.
- vi. Process upset due to erroneous level indication in D-1260 Product Stripper Reflux Drum at HCU 942 caused by plugging of a nozzle.
- vii. Lack of dP indicator and pressure transmitter on T-1530 at HCU 942 does not provide Operators an early warning of when to inject anti-foam agent into the amine absorber.
- viii. Lack of duplicate pressure transmitters on D-1290 Fractionator Feed Flash Drum (stripper bottoms) at HCU 942 increases the likelihood of erroneous pressure indication due to instrument failure.
- ix. Process upset due to erroneous level indication in D-6850 C3/C4 Amine Settler at ATU 7841 caused by plugging of a nozzle.
- x. Process upset due to erroneous level indication in T-6880 Coker Sponge Absorber at DCU 843 caused by plugging of a nozzle.

- xi. Lack of automatic purging in T-101 Pump-Around at ATU 7841 can result in over-purging and lost of pump suction at P-101A/B Pump-Around Pumps, thereby causing an upset to T-101 Amine Regenerator.
- xii. Lack of oil skimming system does not allow the separation of oil from the solvent in T-4002 Spent Amine Tank at ATU 7841.
- xiii. Inadequate efficiency of D-102 Coalescer at ATU 7841 does not allow for better separation of oil from the solvent in T-4002 Spent Amine.
- xiv. Failure to update the task schedule for DCU 843 to match the Coker's current cycle.
- e. With respect to the Port Arthur Refinery, an AG Flaring Incident resulting from any of the following root causes once the corresponding corrective action has been completed pursuant to Paragraph 228:
 - i. Failure to install additional Claus Trains 546-600 and 546-700.
 - ii. Failure to revamp the GFU 241 and 242 Rich Amine Flash drum to include oil skimming facilities and skim oil pumps.
 - iii. Failure to install a rich amine flash drum at GFU 243.

251. If the AG Flaring Incident, Tail Gas Incident or Port Arthur HC Flaring Incident is not a result of one of the root causes identified in Paragraph 250, then the stipulated penalty provisions of Paragraph 260(a) shall apply if the AG Flaring Incident, Tail Gas Incident or Port Arthur HC Flaring Incident:

- a. Results in emissions of sulfur dioxide at a rate greater than twenty (20.0) pounds per hour continuously for three (3) consecutive hours or more and Premcor failed to act consistent with the PMO Plan and/or to take any action during the Incident to limit the duration and/or quantity of SO₂ emissions associated with such incident; or

- b. With respect to any of the Premcor Refineries, causes the total number of Acid Gas Flaring Incidents in a rolling twelve (12) month period to exceed five (5) or causes the total number of Tail Gas Incidents in a rolling twelve (12) month period to exceed five (5), or, with respect to only the Port Arthur Refinery, causes the total number of Port Arthur HC Incidents in a rolling twelve (12) month period to exceed ten (10) for the first three (3) years following the Date of Entry of this Addendum or causes the total number of Port Arthur HC Incidents in a rolling twelve (12) month period to exceed five (5) thereafter. In the event that an Incident falls under both Paragraphs 250 and 251, then Paragraph 250 shall apply.

252. With respect to any AG Flaring Incident, Tail Gas Incident or Port Arthur HC Flaring Incident not identified in Paragraph 250 or 251, the following provisions shall apply:

- a. Agreed Upon Malfunction: If the Root Cause of the Incident was sudden, infrequent, and not reasonably preventable through the exercise of good engineering practice, then that cause shall be designated as an agreed-upon malfunction for purposes of reviewing subsequent Incidents, and the stipulated penalty provisions of Paragraph 260 shall not apply.
- b. First Time: If the Root Cause of the Incident was sudden and infrequent but reasonably preventable through the exercise of good engineering practices, then Premcor shall implement corrective action(s) pursuant to Paragraph 245 and the stipulated penalty provisions of Paragraph 260 shall not apply.
- c. Recurrence: If the Root Cause of the Incident is a recurrence of the same Root Cause that caused a previous Incident occurring after the Date of Entry, then the stipulated penalty provisions of Paragraph 260(a) shall apply unless either the Root Cause of the previous Incident was designated as an Agreed Upon Malfunction under Paragraph 252.a, or Premcor was in the process of

timely developing or implementing a corrective action plan under Paragraphs 228, 242, 245, or 245a for such previous Incident.

253. Defenses: Premcor may raise the following affirmative defenses in response to a demand by the United States for stipulated penalties:

- a. Force majeure.
- b. As to Paragraph 250, the Incident does not meet the identified criteria.
- c. As to Paragraph 251, the Incident does not meet the identified criteria and/or was due to a Malfunction.
- d. As to Paragraph 252, the Incident does not meet the identified criteria, was due to a Malfunction and/or Premcor was in the process of timely developing or implementing a corrective action plan under Paragraphs 228, 242, 245, or 245a for the previous Incident.
- e. In the event a dispute under Paragraph 250 or 251 is brought to the Court pursuant to the Dispute Resolution provisions of this Addendum, Premcor may also assert a start up, shutdown and/or upset defense, but the United States shall be entitled to assert that such defenses are not available. If Premcor prevails in persuading the Court that the defenses of startup, shutdown and/or upset are available for Incidents under 40 C.F.R. § 60.104(a)(1), Premcor shall not be liable for stipulated penalties for emissions resulting from such startup, shutdown and/or upset. If the United States prevails in persuading the Court that the defenses or startup, shutdown and/or upset are not available, Premcor shall be liable for such stipulated penalties.

254. Other than for a Malfunction or force majeure, if no Incident and no violation of the emission limits under section XII.B occurs at a Refinery for a rolling 36 month period, then the stipulated penalty provisions of Paragraph 260(a) shall no longer apply to that Refinery. EPA may

elect to prospectively reinstate the stipulated penalty provision if Premcor has an Incident which would otherwise be subject to stipulated penalties. EPA's decision shall not be subject to dispute resolution. Once reinstated, the stipulated penalty provision shall continue for the remaining life of this Addendum for that Refinery.

G. Miscellaneous

255. Calculation of the Quantity of Sulfur Dioxide Emissions resulting from AG and HC Flaring. For purposes of this Addendum, the quantity of SO₂ emissions resulting from AG Flaring shall be calculated by the following formula:

$$\text{Tons of SO}_2 = [\text{FR}][\text{TD}][\text{ConcH}_2\text{S}][8.31 \times 10^{-5}].$$

The quantity of SO₂ emitted shall be rounded to one decimal point. (Thus, for example, for a calculation that results in a number equal to 10.050 tons, the quantity of SO₂ emitted shall be rounded to 10.1 tons and 10.049 tons would be rounded to 10.0 tons.) For purposes of determining the occurrence of, or the total quantity of SO₂ emissions resulting from, an AG Flaring Incident that is comprised of intermittent AG Flaring, the quantity of SO₂ emitted shall be equal to the sum of the quantities of SO₂ flared during each such period of intermittent AG Flaring.

256. Calculation of the Rate of SO₂ Emissions during AG and HC Flaring. For purposes of this Addendum, the rate of SO₂ emissions resulting from AG Flaring shall be expressed in terms of pounds per hour, and shall be calculated by the following formula:

$$\text{ER} = [\text{FR}][\text{ConcH}_2\text{S}][0.166].$$

The emission rate shall be rounded to one decimal point. (Thus, for example, for a calculation that results in an emission rate of 19.950 pounds of SO₂ per hour, the emission rate shall be rounded to 20.0 pounds of SO₂ per hour; for a calculation that results in an emission rate of 19.949 pounds of SO₂ per hour, the emission rate shall be rounded to 19.9.)

257. Meaning of Variables and Derivation of Multipliers used in the Equations in Paragraphs 255 and 256:

ER = Emission Rate in pounds of Sulfur Dioxide per hour

FR = Average Flow Rate to Flaring Device(s) during Flaring, in standard cubic feet per hour

TD = Total Duration of Flaring in hours

ConcH₂S = Average Concentration of Hydrogen Sulfide in gas during Flaring (or immediately prior to Flaring if all gas is being flared) expressed as a volume fraction (scf H₂S/scf gas)

$$8.31 \times 10^{-5} = [\text{lb. mole H}_2\text{S}/385 \text{ scf H}_2\text{S}][64 \text{ lbs. SO}_2/\text{lb. mole H}_2\text{S}][\text{Ton}/2000 \text{ lbs.}]$$

$$0.166 = [\text{lb. mole H}_2\text{S}/385 \text{ scf H}_2\text{S}][1.0 \text{ lb mole SO}_2/1 \text{ lb. mole H}_2\text{S}][64 \text{ lb. SO}_2/1.0 \text{ lb. mole SO}_2]$$

Standard conditions: 68 deg. F, 14.7 lb.-force/sq.in. absolute

The flow of gas to the AG Flaring Device(s) ("FR") shall be as measured by the relevant flow meter or as calculated through the exercise of best engineering judgment. Hydrogen sulfide concentration ("ConcH₂S") shall be determined from any installed SRP feed gas analyzer. In the event that the flow of gas is not measured by an SRP feed gas analyzer or the data point is inaccurate, the missing or inaccurate data point(s) shall be estimated according to best engineering judgment. The report required under Paragraph 242 shall include the data used in the calculation and an explanation of the basis for any estimates of missing data points.

258. Calculation of the Quantity of SO₂ Emissions resulting from a Tail Gas Incident. For the purposes of this Addendum, the quantity of SO₂ emissions resulting from a Tail Gas Incident shall be calculated by one of the following methods or an equivalent method approved by EPA, based on the type of event:

- a. If the event constitutes a Tail Gas Incident meeting the definition of Paragraph 220(17)(a), the SO₂ emissions are calculated using the methods outlined in Paragraph 255, or
- b. If the event constitutes a Tail Gas Incident meeting the definition of Paragraph 220(17)(b), then the following formula applies to each twenty-four (24) hour period of an incident beginning with the first hour that the rolling twelve (12) hour average SO₂ concentration exceeds the

250 ppmvd Subpart J limit and ending with the twenty-four (24) hour period in which the 250 ppmvd NSPS limit is last exceeded. Total SO₂ emissions during an incident are determined by summing the emissions during each twenty-four (24) hour period of the incident:

$$ER_{TGI} = \sum_{i=1}^{H_{TGI}} ([FR_{Inc.}]_i [Conc. SO_2 - 250]_i [(20.9 - \%O_2)/20.9]_i [0.166 \times 10^{-6}])$$

Where:

ER_{TGI} = Excess Emissions from Tail Gas at the SRP incinerator, in SO₂ lbs. over a twenty-four (24) hour period

$FR_{Inc.}$ = Incinerator Exhaust Gas Flow Rate (standard cubic feet per hour, dry basis) (actual stack monitor data or engineering estimate based on the acid gas feed rate to the SRP) for each hour of the incident.

Conc. SO₂ = Actual SO₂ concentration (CEM data) in the incinerator exhaust gas, ppmvd adjusted to 0% O₂ for each hour of the incident

% O₂ = O₂ concentration (CEM data) in % in the incinerator exhaust gas on dry basis for each hour of the incident

$$0.166 \times 10^{-6} = [lb. \text{ mole of } SO_2 / 385 SO_2] [64 \text{ lbs. } SO_2 / lb. \text{ mole } SO_2] [1 \times 10^{-6}]$$

H_{TGI} = Hours when the incinerator CEM was exceeding 250 ppmvd adjusted to 0% O₂ in each twenty-four (24) hour period of the incident (as described above).

Standard conditions: 68 deg. F, 14.7 lb.-force/sq.in. absolute

In the event the SO₂ and/or the O₂ CEM hourly concentration data are inaccurate or not available or a flow meter for $FR_{Inc.}$, does not exist or is inoperable, then estimates will be used based on best engineering judgment.

259. Any disputes under the provisions of this Part XII shall be resolved in accordance with Part XXIII (Dispute Resolution) of this Addendum.

H. Stipulated Penalties Under This Part

260. Except for Port Arthur HC Flaring Incidents, nothing in this Part XII shall be understood to subject Premcor to stipulated penalties for HC Flaring Incidents under Paragraph 260(a). Premcor shall be liable for stipulated penalties for any Port Arthur HC Flaring Incident, to the extent that such Port Arthur HC Flaring Incident does not qualify for a defense to stipulated penalties authorized under this Addendum. Premcor shall be liable for the following stipulated penalties for violations of the requirements of this Part. For each violation, the amounts identified below apply on the first day of violation, and are calculated for each incremental period of violation (or portion thereof):

a. AG Flaring Incidents and Port Arthur HC Flaring Incidents for which Premcor is liable under this Part. Stipulated penalties for Port Arthur HC Flaring Incidents shall be equal to seventy-five percent (75%) of the penalty for AG Flaring Incidents.

Tons Emitted in AG Flaring Incident	Length of Time from Commencement of Flaring within the AG Flaring Incident to Termination of Flaring within the AG Flaring Incident is 3 hours or less	Length of Time from Commencement of Flaring within the AG Flaring Incident to Termination of Flaring within the AG Flaring Incident is greater than 3 hours but less than or equal to 24 hours	Length of Time from Commencement of Flaring within the AG Flaring Incident to Termination of Flaring within the AG Flaring Incident is greater than 24 hours
5 Tons or Less	\$500 per ton	\$750 per ton	\$1000 per ton
Greater than 5 tons, but less than or	\$1,200 per ton	\$1,800 per ton	\$2,300 per ton, up to, but not

equal to 15 tons			exceeding, \$27,500 in any one calendar day
Greater than 15 tons	\$1,800 per ton, up to, but not exceeding, \$27,500 in any one calendar day	\$2,300 per ton, up to, but not exceeding, \$27,500 in any one calendar day	\$27,500 per calendar day

- i. For purposes of calculating stipulated penalties pursuant to this subparagraph, only one cell within the matrix shall apply. Thus, for example, for an AG Flaring Incident in which the AG Flaring starts at 1:00 p.m. and ends at 3:00 p.m., and for which 14.5 tons of sulfur dioxide are emitted, the penalty would be \$17,400 (14.5 x \$1,200); the penalty would not be \$13,900 [(5 x \$500) + (9.5 x \$1200)].
- ii. For purposes of determining which column in the table set forth in this subparagraph applies under circumstances in which flaring occurs intermittently during an AG or Port Arthur HC Flaring Incident, the flaring shall be deemed to commence at the time that the flaring that triggers the initiation of an AG or Port Arthur HC Flaring Incident commences, and shall be deemed to terminate at the time of the termination of the last episode of flaring within the AG or Port Arthur HC Flaring Incident. Thus, for example, for AG Flaring within an AG Flaring Incident that (i) starts at 1:00 p.m. on Day 1 and ends at 1:30 p.m. on Day 1; (ii) recommences at 4:00 p.m. on Day 1 and ends at 4:30 p.m. on Day 1; (iii) recommences at 1:00 a.m. on Day 2 and ends at 1:30 a.m. on Day 2; and (iv) no further AG Flaring occurs within the AG Flaring Incident, the AG Flaring within the AG Flaring Incident shall be deemed to last 12.5 hours -- not

1.5 hours -- and the column for AG Flaring of "greater than 3 hours but less than or equal to 24 hours" shall apply.

b. For those corrective action(s) which Premcor is required to undertake following Dispute Resolution (Part XXIII), then, from the date EPA notifies Premcor of EPA's determination that corrective action, in addition to or distinct from any corrective action proposed by Premcor is required to respond to the Incident, reported under Paragraph 242, until the earlier of the following dates: (i) the date that a final agreement is reached between EPA and Premcor regarding the corrective action; or (ii) the date that a court order regarding the corrective action is entered:

\$5,000 per month

c. Failure to complete any corrective action under Section XII.E of this Decree in accordance with the schedule for such corrective action agreed to by Premcor or imposed on Premcor pursuant to the Dispute Resolution provisions of Part XXIII of this Addendum provided (with any such extensions thereto as to which EPA and Premcor may agree in writing):

\$5,000 per week

d. Failure to timely submit a report required by this Part XII, beginning on the seventh day past the report's due date:

\$5,000 per week, per report

e. For submitting any report that does not include the elements identified in Paragraph 242, beginning on the seventh day after Premcor receives written notice from EPA of the deficiencies in such report and until corrected:

\$5,000 per week, per report

I. Certification

261. All notices, reports or any other submissions required of Premcor by this Part XII shall contain the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and that I have made a diligent inquiry of those

individuals immediately responsible for obtaining the information and that to the best of my knowledge and belief, the information submitted herewith is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”

262. Except as otherwise provided herein, the reporting requirements set forth in this Part XII do not relieve Premcor of its obligation to any State, local authority, or EPA to submit any other reports or information required by the CAA, or by any other state, federal or local requirements.

J. Flare Gas Recovery Systems

263. Periodic Maintenance of Flare Gas Recovery Systems. The Parties recognize that periodic maintenance may be required for properly designed and operated flare gas recovery systems. To the extent that Premcor currently operates or will operate flare gas recovery systems, Premcor will take all reasonable measures to minimize emissions while such periodic maintenance is being performed.

264. Safe Operation of Refining Processes. The Parties recognize that a flare gas recovery system may need to be bypassed in the event of an emergency, including unscheduled maintenance of such system in order to ensure continued safe operation of refinery processes. Nothing in this Addendum precludes Premcor from temporarily bypassing a flare gas recovery system under such circumstances. To the extent that a Hydrocarbon Flaring Incident at the Premcor Refineries has as its Root Cause the bypass of a flare gas recovery system for safety or maintenance reasons as stated above, Premcor will be required only to describe in the semiannual reports due under Part XVI the emergency or maintenance activity giving rise to the Hydrocarbon Flaring Incident at the Premcor Refinery, including an estimate of emissions, and to list the date, time, and duration of such Incident.

265. Commissioning. For the six (6) month period after the installation of a flare gas recovery system (that is, during the time in which the flare gas recovery system is being commissioned), Premcor will not be required to undertake Hydrocarbon Flaring Incident investigations if the Root Cause of the Hydrocarbon Flaring Incident is directly related to the commissioning of the flare gas recovery system and will not be required to take any further action.

266. Lima Refinery: Emissions Unit P025 – Benzene NESHAPS Sewer System.

a. Premcor shall install, operate and maintain a compressor system to route all Emissions Unit P025 (benzene NESHAP sewer system) vapors to an existing sulfur recovery unit fuel gas amine treater (“Compressor System”) by no later than April 1, 2008. Premcor shall complete installation of the Compressor System in accordance with the following schedule:

i. Within thirty (30) days of the Date of Entry of this Addendum, Premcor shall complete the process design and perform the project detailed design. This includes the selection of the compressor design, procurement of financial funding, and completion of the detailed mechanical, electrical, instrumental and civil design.

ii. By no later than September 30, 2007, Premcor shall order all the long lead items. This includes, but is not limited to, procurement of materials and installation of auxiliary components.

iii. By April 1, 2008, Premcor shall complete the installation of the Compressor System and shall, thereafter, route all vapors to an existing sulfur recovery unit fuel gas amine treater.

b. Premcor shall submit progress reports for the requirements specified in Paragraph 266.a within fourteen (14) days after each completion date. The reports shall include a narrative description of whether the requirement has been completed and how it was accomplished, with any documentation necessary to demonstrate that the requirement was completed. If a requirement has not been completed, the report shall include an explanation of the reasons for the missed completion date, and a description of all actions to be taken to complete the requirement. In the event of a missed completion date, a follow-up progress report shall be submitted every fourteen (14) days after the initial report of non-completion until the requirement is completed. In addition to these progress reports, Premcor shall also submit a status reports concerning the work on the compressor system by July 1, 2007, fourteen (14) days after Date of Entry, and January 14, 2008.

c. Within thirty days after the completion of the installation of the Compressor System, Premcor shall submit Title V permit and permit to install modification applications to the State of Ohio that incorporate the requirements in 266.a. The applications shall include suggested monitoring, recordkeeping and reporting that are sufficient to provide reasonable assurance the Compressor System is properly routing the Emissions Unit P025 (benzene NESHAP sewer system) vapors to an existing sulfur recovery unit fuel gas amine treater, as well as addressing all other applicable requirements.

267. Reserved.

XIII. REFINERY SELF-EVALUATIONS AND AUDITS

A. Reserved

268. – 269. Reserved.

B. NSPS QQQ Audits

270. Premcor may elect to perform an audit of compliance with the regulatory obligations of Subpart QQQ of the NSPS, promulgated at 40 C.F.R Part 60, Subpart QQQ (“Subpart QQQ”) at one or more Premcor Refineries (“QQQ Audit”). Within ninety (90) days of the Date of Lodging, Premcor shall notify EPA in writing which Premcor Refineries, if any, are electing to perform a QQQ Audit pursuant to this Section XIII.B.

271. QQQ Audits may cover all potential obligations from reporting years 1999 through Date of Entry of this Decree, including, but not limited to: (1) potential failures to make required applicability determinations; (2) potential failures to install proper control or monitoring equipment; (3) potential failures to undertake work practices; and (4) potential failures to submit accurate and/or timely reports.

272. The QQQ Audits may be performed by either an outside contractor or qualified internal staff. Premcor may, where appropriate, consult with EPA regarding the scope of any of the proposed

QQQ Audits. The QQQ Audits must be completed within one (1) year of notification under Paragraph 270.

273. For each Refinery electing to conduct a QQQ Audit, a final QQQ Audit report shall be submitted to EPA within thirty (30) days of completion of the QQQ Audit (the "QQQ Audit Report"). The QQQ Audit Report shall: describe the processes, procedures, and methodology used to conduct the audit; clearly identify any violations or potential violations of Subpart QQQ discovered at the Refinery through the QQQ Audit; describe any and all measures taken or to be taken to correct the disclosed violations; and provide details concerning the costs associated with such corrective action(s) and economic benefit(s) obtained by Premcor.

274. Each QQQ Audit report shall be signed by an appropriate company official and the following certification shall directly precede such signature:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and that I have made a diligent inquiry of those individuals immediately responsible for obtaining the information and that to the best of my knowledge and belief, the information submitted herewith is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

275. Violations and potential violations reported in a QQQ Audit and corrected by the date of the QQQ Audit Report or such other reasonable additional time as EPA allows shall be deemed to satisfy the requirements of EPA's Audit Policy. Once EPA has made the determination that a QQQ Audit conducted by Premcor was consistent with the requirements of this Section XIII.B, EPA will notify Premcor in writing. Premcor shall thereupon be released from liability for any claims for civil and administrative penalties with respect to all violations or potential violations disclosed and corrected in accordance with this Part XIII, and contained in EPA's notification.

276. For each Refinery that undertakes a QQQ Audit, Premcor shall pay a stipulated penalty of \$50,000, in total, for each such Refinery covering any and all disclosed violations, but if EPA determines that the economic benefit of non-compliance exceeds \$25,000, Premcor shall pay an additional stipulated penalty equal to the difference between such economic benefit and \$25,000.

277. Reserved.

C. Refinery MACT I Audits

278. Premcor may elect to perform an audit of compliance with the regulatory obligations of 40 C.F.R. Part 63, Subpart CC promulgated at 40 C.F.R Section 63.640 et seq., (the "Refinery MACT I") at one or more Premcor Refineries ("MACT Audit"). Within ninety (90) days of the Date of Lodging, Premcor shall notify EPA in writing which Refineries, if any, are electing to perform a MACT Audit pursuant to this Section XIII.C.

279. MACT Audits may cover all potential obligations from reporting years 1999 through Date of Entry of this Decree. Reporting obligations under MACT CC may include, but are not limited to: (1) potential failures to make required applicability determinations; (2) potential failures to install proper control or monitoring equipment; (3) potential failures to undertake work practices; and (4) potential failures to submit accurate and/or timely reports.

280. The MACT Audits may be performed by either an outside contractor or qualified internal staff. Premcor may, where appropriate, consult with EPA regarding the scope of any of the proposed MACT Audits. The MACT Audits must be completed by no later than one year of notification under Paragraph 278.

281. For each Refinery electing to conduct a MACT Audit, a final MACT Audit Report shall be submitted to EPA within 30 days of completion of the MACT Audit. The MACT Audit Report shall describe the processes, procedures, and methodology used to conduct the audit; clearly identify any violations or potential violations of Refinery MACT I discovered at the Refinery through the MACT Audit; describe any and all measures taken to correct the disclosed violations; and provide details concerning the costs associated with such corrective action(s) and economic benefit(s) obtained by Premcor.

282. Each MACT Audit Report shall be signed by an appropriate company official and the following certification shall directly precede such signature:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted herein and that I have made a diligent inquiry of those individuals immediately responsible for obtaining the information and that to the best of my knowledge and belief, the information submitted herewith is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

283. Violations and potential violations reported in a MACT Audit Report and corrected by the date of the MACT Audit Report or such other reasonable additional time as EPA allows shall be deemed to satisfy the requirements of EPA's Audit Policy. Once EPA has made the determination that a MACT Audit conducted by Premcor was consistent with the requirements of this Section XIII.C, EPA will notify Premcor in writing. Premcor shall thereupon be released from liability for any claims for civil and administrative penalties with respect to all violations or potential violations disclosed and corrected in accordance with this Part XIII, and contained in EPA's notification.

284. For each Refinery that undertakes a MACT I Audit, Premcor shall pay a stipulated penalty of \$50,000, in total, for such Refinery covering any and all disclosed violations, but if EPA determines that the economic benefit of its non-compliance exceeds \$25,000, Premcor shall also pay an additional stipulated penalty equal to the difference between such economic benefit and \$25,000.

285. Reserved.

XIV. PERMITTING

286. Construction. Premcor agrees to apply for and make all reasonable efforts to obtain in a timely manner all appropriate federally enforceable permits (or construction permit waivers) for the construction of the pollution control technology required to meet the above pollution reductions at the Premcor Refineries. For purposes of the PSD and New Source Review ("NSR") non-attainment regulations, any source subject to an optimization study or demonstration period pursuant to this Addendum, whether involving the construction of control equipment or utilization of catalyst additives, will not be deemed to have "commenced operation" as a modified source including such control technology or catalyst additive until after the optimization study or demonstration period, as applicable, is completed and applicable emission limitations are established for such source in

accordance with this Addendum. Nothing in this paragraph constitutes a determination by the United States or any Plaintiff-Intervener hereto, nor any admission by Premcor that any permit is required prior to the installation or operation of any equipment installed pursuant to this Addendum.

287. In submitting to the appropriate permitting authority an application for an air quality permit governing any emission control measure identified in this Addendum, Premcor may include in its permit application any contemporaneous changes associated with a single project. The calculation of the emission increase or decrease attributed to the project shall apply the following criteria:

- a. The “baseline” emission rate used for the project shall reflect emissions of the relevant criteria pollutants prior to project implementation and shall not reflect projected emission reductions from any emission control measures identified in this Addendum prior to the date that such emission control measures are required or installed pursuant to this Addendum, whichever date is earlier (the “Pre-Project Baseline Emission Rate”);
- b. The projected emission rate attributable to the project following completion of the project governed by the permit application shall be based upon the net emission increase or decrease resulting from all contemporaneous changes that are part of a single project and that are reflected in the permit application (the “Post-Project Projected Emission Rate”); and
- c. Both the Pre-Project Baseline Emission Rate and the Post-Project Projected Emission Rate shall otherwise be determined, and the resulting net emission increase otherwise calculated, in accordance with relevant regulations applicable at the time of permit application submittal.

288. In the event that any provision of this Addendum provides for imposition upon an emission unit of any emission limitation, either through the Addendum or any air quality permit to be issued in accordance with the terms of the Addendum, the compliance of the emission unit with the

relevant emission limitation shall be determined based only on emissions from the source subsequent to the effective date of the emission limitation.

289. – 290. Reserved.

291. Obtaining Permit Limits for Addendum Emission Limits and Standards That Are Effective Upon Entry. By no later than December 31, 2007, Premcor shall submit applications to the appropriate permitting authority to incorporate the emission limits and standards required by the Addendum that are effective as of the Date of Entry of the Addendum into federally enforceable minor or major new source review permits or other permits (other than Title V permits) which are federally enforceable. Following submission of the permit application, Premcor shall cooperate with the appropriate permitting authority by promptly submitting all information that such permitting authority seeks following its receipt of the permit application. Upon issuance of such permits or in conjunction with such permitting, Premcor shall file any applications necessary to incorporate the requirements of those permits into the Title V permit for the relevant refinery. Nothing in this Addendum is intended nor shall it be construed to require the establishment of emission limits (e.g., pounds per hour or tons per year) other than those concentration or rate based limits expressly prescribed in this Addendum.

292. Obtaining Permit Limits For Addendum Emission Limits That Become Effective After Date of Entry. As soon as practicable, but in no event later than ninety (90) days after the effective date or establishment of any emission limits and standards required by or under this Addendum, Premcor shall submit applications to the appropriate permitting authority to incorporate those emission limits and standards into federally enforceable minor or major new source review permits or other permits (other than Title V permits) which are federally enforceable. Following submission of the permit application, Premcor shall cooperate with the appropriate permitting authority by promptly submitting all information that such permitting authority seeks following its receipt of the permit application. Upon issuance of such permit or in conjunction with such permitting, Premcor shall file

any applications necessary to incorporate the requirements of that permit into the Title V permit of the appropriate refinery.

293. Mechanism for Title V Incorporation. The Parties agree that the incorporation of any emission limits or other standards into the Title V permits for the Premcor Refineries, as required under Paragraphs 291 and 292, shall be in accordance with the applicable state or local Title V rules.

294. This Addendum is not intended to require the continued use of a particular control technology past the compliance dates established in this Addendum. The parties agree that once the concentration based permit limits are established using the methodology provided for in the Addendum, Premcor may elect to comply with that concentration based permit limit through other control technology methods. Nothing here relieves Premcor from obtaining any appropriate state permits or authorizations to switch to such other control technology or methods.

XV. EMISSION REDUCTION CREDITS

295. This Part sets forth the exclusive process for Premcor to use any NO_x or SO₂ emission reductions required by this Addendum as emission reduction credits for PSD netting or major nonattainment New Source Review ("NSR") offsets, or in any minor NSR permit or permit proceeding where such credits or offsets are relied upon to avoid PSD or major nonattainment NSR permitting. Except as provided in this Part, Premcor will neither generate nor use any NO_x or SO₂ emission reductions resulting from any projects conducted pursuant to this Addendum as emission reduction credits or offsets in any PSD, major nonattainment and/or minor NSR permit or permit proceeding ("NSR Permit" or "NSR Permitting").

296. Outside the Scope of Prohibition. Nothing in this Addendum is intended to prohibit Premcor from:

- a. utilizing or generating netting reductions or emission offset credits from refinery units that are covered by this Addendum to the extent that the proposed netting reductions or emission offset credits represent the difference between the

emissions limitations set forth in or used to meet the terms of this Addendum for these refinery units and the more stringent emissions limitations that Premcor may elect to accept for these refinery units in NSR Permitting;

- b. utilizing or generating netting reductions or emission offset credits for refinery units that are not subject to an emission limitation pursuant to this Addendum;
- c. utilizing emission reductions from the installation of controls required by this Addendum in determining whether a project that includes both the installation of controls under this Addendum and other construction occurring at the same time and that is permitted as a single project, triggers NSR Permitting; and
- d. utilizing or generating emission reductions for a particular Refinery's compliance with any rules or regulations designed to address regional haze, state specific air quality issues, or the non-attainment status of any area (excluding NSR Permitting, but specifically including the Beaumont/Port Arthur Area NOx SIP, and other such programs) that apply to the particular Refinery. Notwithstanding the preceding sentence, Premcor will not trade or sell any emissions reductions to another refinery or plant.

A. Generating NOx and SO₂ Emission Credits

296A. For purposes of this Addendum, emissions credits for PSD netting and Nonattainment NSR offsets may be applied and used only at the refinery where they were generated.

297. Emission reduction credits generated by each unit shall be determined in accordance with the PSD/Nonattainment NSR regulations applicable to the relevant facility at the time the reductions are proposed to be generated. The quantity of emission reduction credits shall be calculated as the difference between such unit's baseline emissions and its applicable emissions at the time the emission reductions are proposed to be used for netting or are generated for offset purposes, as limited by the percentages expressed and the limitations on use set forth in Paragraphs 299 and 300.

298. To apply or use emission reduction credits under this Part, Premcor must make any such emission reductions federally enforceable. Such emission reductions are creditable for five years from their date of generation and shall survive termination of the Addendum.

B. Using NOx and SO₂ Emission Credits and Offsets

299. Subject to Paragraph 305, Premcor may use, without further restriction or limitation up to five percent (5%) of the NOx emission reductions achieved through its compliance with Part IV of this Addendum as emission reduction credits for netting and/or offsets in any NSR Permit after the Date of Entry of this Addendum; provided, however, that Premcor may use such NOx emission reductions for netting or offset proposes only at a new or modified heater or boiler that is designed to achieve an emission rate of 0.020 lbs NOx per million Btu (even if the burners do not achieve that emission rate in practice and a less stringent emission limit is therefore warranted); and provided further, however, that, to the extent that Premcor uses any NOx emission reduction credits from the five percent (5%) of the NOx emission reductions achieved through its compliance with Part IV of this Addendum pursuant to this sentence, then the quantity of credits available to Valero pursuant to Paragraph 299 of the Consent Decree shall be reduced by the number of NOx emission reduction credits used by Premcor pursuant to this sentence. Premcor may use up to an additional five percent (5%) of the NOx emission reductions achieved through its compliance with Part IV of this Addendum as emission reduction credits for netting and/or offsets in any PSD, Nonattainment NSR and/or minor NSR permit or permit proceeding after the Date of Entry of this Addendum only at a new or modified heater or boiler that is designed to achieve an emission rate of 0.020 lbs NOx per million Btu (even if the burners do not achieve that emission rate in practice and a less stringent emission limit is therefore warranted) and that is constructed or modified for purposes of compliance with Clean Fuels requirements. For purposes of this Addendum, a "Clean Fuels" requirement includes Tier II Gasoline, Low or Ultra Low Sulfur Diesel, ether based oxygenate replacement (but only to the extent such

replacement is demonstrated by Premcor), or other specialty fuels identified in or required under any SIP.

300. Subject to Paragraph 305, Premcor may use, without further restriction or limitation, up to five percent (5%) of the SO₂ emission reductions achieved through compliance with this Addendum as emission reduction credits for netting and/or offsets in any NSR Permit after the Date of Entry of this Addendum, provided, however, that such new or modified unit is for purposes of compliance with Clean Fuels requirements and that such new or modified source meets the definition of a "Netting Unit" under Paragraph 301. Premcor may use up to an additional five percent (5%) of the SO₂ emission reductions achieved through its compliance with this Addendum as emission reduction credits for netting and/or offsets in any NSR Permit after the Date of Entry of this Addendum only to the extent that such emission reductions were generated by a "Netting Unit" and will be used for a new or modified source that meets the definition of a "Netting Unit;" provided however that, to the extent that Premcor uses any SO₂ emission reduction credits from the additional five percent (5%) of the SO₂ emission reductions achieved through its compliance with this Addendum pursuant to this sentence, then the quantity of credits available to Valero pursuant to Paragraph 300 of the Consent Decree shall be reduced by the number of SO₂ emission reduction credits used by Premcor pursuant to this sentence.

301. For purposes of this Part XV, Netting Units shall be defined as follows:

- a. Any FCCU that achieves an SO₂ concentration of 25 ppmvd on a 365-day rolling average basis, at 0% oxygen, or such other emission limit as may be established by EPA based upon a percentage reduction in SO₂ emissions, as specifically authorized in Part VI of this Addendum;
- b. Heaters and boilers that either combust fuel gas containing less than 0.1 grams of hydrogen sulfide per dry standard cubic foot of fuel gas or emit SO₂ at less than 20 ppmvd at 0% oxygen, both on a 3-hour rolling average basis; and

- c. An SRP that complies with relevant provisions of 40 C.F.R. Part 60, Subpart J.

302. Premcor will submit to EPA annual reports regarding the generation and use of emission reduction credits under this Part XV. The first such report will be submitted by January 31, 2008. Successive reports will be submitted on January 31 of each subsequent year for the duration of this Addendum. Each such report shall contain the following information for each Premcor Refinery, to the extent that emission reduction credits are both generated at such refinery and are limited by this Part:

- a. The quantity of credits generated since the Date of Entry of this Addendum and the emission unit(s) generating such credits, the date on which those credits were generated, and the basis for those determinations;

- b. The quantity of credits used since the Date of Entry of this Addendum and the emission units to which those credits were applied;

- c. To the extent known at the time the report is submitted, the additional units to which credits will be applied in the future and the estimated amount of such credits that will be used for each such unit; and

- d. To the extent Premcor will seek to use the additional five percent (5%) of NO_x credits provided for in the second sentence in Paragraph 299 and/or the five percent (5%) of SO₂ credits provided for in the first sentence in Paragraph 300, the date by which Clean Fuels are expected to be produced at that Facility and a detailed explanation of why such unit(s) is (are) necessary for the production of Clean Fuels.

303. The provisions of this Part are intended to restrict the quantity of SO₂ and NO_x emission reduction credits that may be generated by Premcor as a result of the emission reductions specifically required by this Addendum for use in any netting and/or offsets in any NSR Permit after the Date of Entry of this Addendum. In addition, the provisions of this Part restrict the use of certain

SO₂ and NO_x emission reduction credits authorized for generation under this Addendum to projects necessary to the production of Clean Fuels, as defined and in the manner described in this Addendum.

304. Without limitation to the foregoing, nothing in this Addendum is intended to contravene, impair, be inconsistent with or otherwise restrict compliance options available to Premcor under any SIP to demonstrate compliance with any emission limitation or other standard applicable to the Premcor Refineries, including without limitation any provision established or imposed under an applicable SIP governing intra-facility emission trading.

305. Nothing in this Part XV shall affect the validity of permits issued or permit applications made prior to the Date of Lodging, including any contemporaneous netting analyses in such permits and/or applications. The following shall apply to all such permits and permit applications:

a. Emission reduction credits and/or offsets used by or for units that were permitted, constructed/modified and began operation before October 31, 2006, shall not affect the amount of credits and/or offsets available for Premcor's use under Paragraphs 299 and 300.

b. Emission reduction credits and/or offsets used by or for units that were permitted but did not begin operation before November 10, 2006, shall not affect the amount of credits and/or offsets available for Premcor's use under Paragraphs 299 and 300.

c. Emission reduction credits and/or offsets used by or for units that were not permitted before October 31, 2006, shall affect the amount of credits and/or offsets available for Premcor's use under Paragraphs 299 and 300.

For purposes of Paragraph 305(c), the effect of such emission reduction credits and/or offsets shall be to reduce the amount of credits and/or offsets available for Premcor's use under Paragraphs 299 and 300 as applicable to such Refinery. Such reduction of available credits and/or offsets will be for non-Clean Fuels projects and/or for Clean Fuels projects, as appropriate. If such reductions exceed the amount available under Paragraphs 299 and/or 300, the amount available for Premcor's use under these paragraphs shall be 0.0. For example, if a refinery generates 500 tons of SO₂ emissions reduction

credits through compliance with the Addendum, it would have 50 tons available for use under Paragraph 300 [5% of 500 tons for general projects plus 5% of 500 tons for Clean Fuels projects]. If 30 tons of reductions were used in the existing permitting actions for a Clean Fuels project, such refinery would have 0 tons of available credits to use for Clean Fuels projects and 20 tons available for general projects under Paragraph 300 of the Addendum; but if 70 tons of reductions were so used, such refinery would have 0 tons of credits available under Paragraph 300.

306. Reserved.

XVI. GENERAL RECORDKEEPING, RECORD RETENTION AND REPORTING

307. Premcor shall retain all records required to be maintained in accordance with this Addendum for a period of five (5) years or until Termination, whichever is longer, unless applicable regulations require the records to be maintained longer.

308. Following the first full calendar quarter after the Date of Entry of the Addendum, Premcor shall submit to EPA, within thirty (30) days after the end of such calendar quarter, and semiannually thereafter during the life of this Addendum a progress report ("Progress Report") covering each refinery owned and operated by Premcor. Each Progress Report shall be certified in accordance with Paragraph 309 and shall contain, for each such refinery, as applicable, the following:

- a. progress report on the implementation of the requirements of Parts IV through XII of this Addendum;
- b. a summary of emissions data that is specifically required by Parts IV through XII of this Addendum for the calendar quarter;
- c. a description of any problems anticipated with respect to meeting the compliance programs of Parts IV through XII of this Addendum;
- d. a description of implementation activity for all environmentally beneficial projects; and

- e. any such additional matters as Premcor believes should be brought to the attention of the United States, EPA and/or the appropriate Plaintiff-Intervener.

309. To the extent that any provision of this Addendum specifically requires that any notice, report or other submission must be certified, such submissions shall contain the following certification. Such certification may be signed by the refinery manager or his/her designee, as provided in writing by the refinery manager, provided the designee is a company employee with responsibilities related to environmental management or compliance.

"I certify under penalty of law that this information was prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete."

XVII. PENALTY

310. Within thirty (30) calendar days of the Date of Entry, Premcor shall pay a civil penalty, in the aggregate, of \$4,250,000 as follows: (i) \$2,750,000 to the United States, of which \$40,000 will be a civil penalty paid to the EPA Hazardous Substances Superfund; (ii) \$800,000 to Plaintiff-Intervener, the State of Ohio; and (iii) \$700,000 to Plaintiff-Intervener, Memphis Shelby County Health Department.

311. Premcor's payment of civil penalty monies to the United States shall be made by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File No. and DOJ Case Number 90-5-2-1-06811/1, and the civil action case name and case number of the United States District Court for the Western District of Texas. The costs of such EFT shall be Premcor's responsibility. Payment shall be made in accordance with instructions provided to Premcor by the Financial Litigation Unit of the U.S. Attorney's office for the Western District of Texas. Any funds received after 11:00 a.m. (est) shall be credited on the next business day. Premcor shall provide notice of payment, referencing the USAO

File No. and DOJ Case Number, and the civil action case name and case number to the Department of Justice and to EPA, as provided in Paragraph 376 (Notice).

312. – 312C. Reserved.

312D. Premcor's payment of civil penalty monies to the State of Ohio shall be made by two corporate checks, as follows: one in the amount of \$640,000, and the second in the amount of \$160,000 with the notation that it is for "State of Ohio School Bus Fund (Fund 5CD)." Both checks shall be made payable to the "Treasurer, State of Ohio" and delivered to the attorneys for the State of Ohio:

Martha Sexton, or her successor, Paralegal
Office of the Attorney General of Ohio
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, OH 43215-3400

312E. Premcor's payment of civil penalty monies to the Memphis Shelby County Health Department shall be made by corporate check made payable to "Memphis Shelby County Health Department" and delivered to:

Robert Rogers, P.E.
Technical Manager
Memphis & Shelby County Health Department
Pollution Control Section
814 Jefferson Avenue
Memphis, TN 38105

313. Reserved.

314. Upon the Date of Entry, this Addendum shall constitute an enforceable judgment for purposes of post-judgment collection in accordance with Rule 69 of the Federal Rules of Civil Procedure, the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001-3308, and other applicable federal authority. The United States and the Plaintiff-Interveners shall be deemed judgment creditors for purposes of collection of any unpaid amounts of the civil and stipulated penalties and interest.

315. No amount of the civil penalty to be paid by Premcor shall be used to reduce its federal or state tax obligations.

XVIII. RESERVED

XIX. SUPPLEMENTAL/BENEFICIAL ENVIRONMENTAL PROJECTS

A. Facility/Community-Specific Supplemental/Beneficial Environmental Projects

316. Premcor shall implement the following Supplemental Environmental Projects ("SEPs") in accordance with the timetables and requirements set forth in this Part. In implementing the SEPs in this Part, Premcor shall spend no less than a total of \$4,250,000. In the event that Premcor completes any of the SEPs identified in this Paragraph but does not expend the minimum specified amount for such SEP, Premcor may propose for EPA approval either (i) an alternative SEP, or (ii) to transfer the remaining funds to an existing SEP.

a. Port Arthur.

(1) **Community-Based Health Project:** Premcor shall implement at the Gulf Coast Health Center a program to enhance the Center's resources for the diagnosis and treatment of asthma, respiratory, cardio-pulmonary, or other illnesses, ailments, or health impacts that may be caused or exacerbated by exposure to air pollutants. Within one year of the Date of Entry of this Addendum, Premcor shall submit a Statement of Work ("SOW"), including a schedule for the completion of this SEP, that shall be subject to approval by EPA. Premcor shall spend not less than \$1,000,000 on this SEP.

(2) **Community Air Monitoring Project:** Premcor shall acquire and place into operation a mobile air monitoring van, which shall be operated for the use and benefit of the Jefferson County Local Emergency Planning Committee ("LEPC"), to, inter alia, monitor and respond to emission events. Premcor shall use best efforts to coordinate with the LEPC regarding the implementation of this SEP. Within one year of the Date of Entry of this Addendum, Premcor shall submit a SOW, including a schedule and an estimated cost for the acquisition and operation of the mobile air monitoring van, that shall be subject to review by the LEPC and to approval by EPA.

Premcor shall complete implementation of the approved SOW by no later than three years from the Date of Entry. Premcor shall spend not less than \$50,000 on this SEP.

(3) Community School Shelter-in-Place Project: Premcor shall install at the Booker T. Washington Elementary School and the Memorial 9th Grade Center School in Port Arthur a “shelter-in-place” air control system to detect, isolate, and/or filter air pollutants and/or emissions that may result from emission events in the Port Arthur area. Premcor shall use best efforts to coordinate with the appropriate school authority regarding the implementation of this SEP. Within one year of the Date of Entry of the Addendum, Premcor shall submit a SOW, including a schedule and an estimated cost for each shelter-in-place system and any related improvements, that shall be subject to review by the appropriate school authority and to approval by EPA. Premcor shall complete implementation of the approved SOW by no later than four years from the Date of Entry. Premcor shall spend not less than \$500,000 on this SEP.

(4) Community Low Income Housing Emission Reduction Project: Premcor shall provide new low-NOx-emitting natural gas or electric water heaters to replace existing higher-emitting water heaters in low-income residences in the Port Arthur area. Within ninety (90) days of the Date of Entry of this Addendum, Premcor shall deposit not less than \$50,000 into an escrow account established by Premcor for the purpose of implementing this SEP. Premcor shall, upon the written request of the South East Texas Regional Planning Commission, disburse such funds and any interest as directed by the Commission for purposes of implementing this SEP through the Commission’s “Lighthouse Program.” Premcor shall include an estimate of the anticipated emissions reductions resulting from this SEP in Premcor’s reporting pursuant to Paragraph 318.c.

(5) Port Arthur VOC Reduction Project: Premcor shall install controls on unregulated and/or uncontrolled atmospheric relief vents at the Port Arthur Refinery that will route emissions from such vents to a control device to eliminate or significantly reduce the potential for

fugitive VOC emissions. This project will be completed by no later than December 31, 2009. Premcor shall spend not less than \$675,000 on this SEP.

b. Lima.

(1) City of Lima Traffic Signal Synchronization Study: Premcor shall develop and implement a Traffic Signal Synchronization study to optimize traffic flow in the City of Lima to reduce emissions from preventable vehicle idling resulting from inefficient traffic flow. Within ninety (90) days of Date of Entry of this Addendum, Premcor shall deposit not less than \$200,000 into an escrow account established by Premcor for the purpose of implementing this SEP. Premcor shall, upon written request by the City of Lima, disburse such funds and any interest as directed by the City for the purpose of implementing this SEP. Premcor shall include an estimate of the anticipated emissions reductions and health benefits resulting from this SEP in Premcor's reporting pursuant to Paragraph 318.c.

(2) Lima VOC Reduction Project: Premcor shall install controls on unregulated and/or uncontrolled atmospheric relief vents at the Lima Refinery that will route emissions from such vents to a control device to eliminate or significantly reduce the potential for fugitive VOC emissions. This project will be completed by no later than December 31, 2009. Premcor shall spend not less than \$675,000 on this SEP.

(3) Lima Infrared Camera Imaging Project. Premcor shall perform a SEP designed to demonstrate the use of infrared imaging equipment to identify emissions from leaking components and other sources of fugitive VOC emissions at the Lima Refinery (the "Lima Infrared Camera Imaging Project"). Within ninety (90) days of the Date of Entry of this Addendum, Premcor shall submit a plan for the Lima Infrared Camera Imaging Project. The plan shall include a description of the project's overall objective(s), the procedures to be followed, a project budget (detailing expected equipment costs, laboratory costs, and contractor costs), and a schedule for performing and completing the project. The plan shall include procedures for the use of the infrared imaging equipment for a

period of not less than one year to, inter alia, (i) periodically “sweep” the Lima Refinery to identify fugitive sources of VOC emissions from regulated and unregulated sources, and (ii) monitor valves, tanks, and other equipment to identify and minimize upsets and other uncontrolled VOC emissions during periods of startup and shutdown. Premcor shall include in its reporting pursuant to Paragraph 318.c an estimate of the emissions benefits associated with the Lima Infrared Camera Imaging Project. Premcor shall spend not less than \$50,000 on this SEP.

(4) State and Local SEPs:

(i) State Particulate Matter Speciation Monitoring and Sampling Project:

Within ninety (90) days of the Date of Entry of this Addendum, Premcor shall transfer no less than \$200,000 to the Lake Michigan Air Directors Consortium to support PM 2.5 speciation monitoring and source sampling.

(ii) State Diesel Emission Reduction Project: Within ninety (90) days of the Date of Entry of this Addendum, Premcor shall transfer no less than \$50,000 to the Ohio Environmental Council for the installation of diesel retrofit technologies to reduce emissions of particulates and ozone precursors from municipal trucks and/or buses.

c. Memphis:

(1) The Memphis Infrared Camera Imaging Project. Premcor shall perform a SEP designed to demonstrate the use of infrared imaging equipment to identify emissions from leaking components and other sources of fugitive VOC emissions at the Memphis Refinery (the “Memphis Infrared Camera Imaging Project”). Within ninety (90) days of the Date of Entry of this Addendum, Premcor shall submit a plan for the Memphis Infrared Camera Imaging Project. The plan shall include a description of the project’s overall objective(s), the procedures to be followed, a project budget (detailing expected equipment costs, laboratory costs, and contractor costs), and a schedule for performing and completing the project. The plan shall include procedures for the use of the infrared imaging equipment for a period of not less than one year to, inter alia, (i) periodically “sweep” the

Memphis Refinery to identify fugitive sources of VOC emissions from regulated and unregulated sources, and (ii) monitor valves, tanks, and other equipment to identify and minimize upsets and other uncontrolled VOC emissions during periods of startup and shutdown. Premcor shall include in its reporting pursuant to Paragraph 318.c an estimate of the emissions benefits associated with the Memphis Infrared Camera Imaging Project. Premcor shall spend not less than \$50,000 on this SEP.

(2) Memphis Wastewater Treatment H₂S Reduction Project: Premcor shall, in conjunction with the City of Memphis, purchase and install vapor controls and undertake such other measures as are necessary to reduce or eliminate H₂S off-gassing from the City of Memphis wastewater treatment works. Within 270 days from the Date of Entry of this Addendum, Premcor shall submit a Statement of Work, including a schedule and identifying the work to be performed by Premcor to implement this SEP, that shall be subject to review by the City of Memphis and approval by EPA. Premcor shall coordinate with the City of Memphis for the completion this SEP by no later than December 31, 2009. Premcor shall spend not less than \$450,000 on this SEP

(3) State and Local SEPs:

(i) City of Memphis Ozone Reduction Project: Within ninety (90) days of the Date of Entry of this Addendum, Premcor shall transfer \$250,000 to the Memphis Area Transit Authority ("MATA") to subsidize reduced bus fare services provided by MATA on high ozone, or "ozone alert," days to reduce the number of commuter passenger vehicles in use on high-ozone days in the Memphis area.

(ii) Port of Memphis Emission Reduction Project: Within ninety (90) days of the Date of Entry of this Addendum, Premcor shall transfer \$50,000 to the International Port of Memphis for the installation of diesel retrofit technologies to reduce emissions of particulates and ozone precursors from diesel engines and vehicles at the Port.

317. Reserved.

B. General Project Requirements

318. a. Premcor is responsible for the satisfactory completion of the projects required under this Addendum in accordance with this Part XIX. Upon completion of each project set forth in Paragraphs 316, Premcor will submit to EPA and the applicable Plaintiff-Intervener a cost report certified as accurate under penalty of perjury by a responsible corporate official. If Premcor does not expend the project-specific amounts required under Paragraphs 316, Premcor will pay a stipulated penalty equal to the difference between the amount expended (as demonstrated in the certified cost report(s)) and such project-specific required amount. The stipulated penalty will be paid as provided in Paragraph 321 (Payment of Stipulated Penalties).

b. By signing this Addendum and except with respect to Paragraph 316, Premcor certifies that it is not required, and has no liability under any federal, state, regional or local law or regulation or pursuant to any agreements or orders of any court, to perform or develop any of the projects identified in this Part XIX. Premcor further certifies that it has not applied for or received, and will not in the future apply for or receive: (1) credit as a Supplemental Environmental Project or other penalty offset in any other enforcement action for the projects set forth in this part, except with respect to Paragraph 316; (2) credit for any emissions reductions resulting from the projects set forth in this part in any federal, state, regional or local emissions trading or early reduction program; or (3) a deduction from any federal, state, regional, or local tax based on its participation in, performance of, or incurrence of costs related to the projects set forth in this part.

c. Premcor will include in each report required by Paragraph 308 a description of its progress under this Part XIX. In addition, the report required by Paragraph 308 of this Addendum for the period in which each project identified in Paragraphs 316 and/or 317 is completed will contain the following information with respect to such project(s):

i. A detailed description of each project as implemented;

- ii. A brief description of any significant operating problems encountered, including any that had an impact on the environment, and the solutions for each problem;
- iii. Certification that each project has been fully implemented pursuant to the provisions of this Addendum; and
- iv. A description of the environmental and public health benefits resulting from implementation of each project (including quantification of the benefits and pollutant reductions, if feasible).
- v. Premcor agrees that it must clearly indicate that these projects are being undertaken as part of the settlement of an enforcement action for alleged violations of the Clean Air Act and corollary state statutes in any public statements regarding these projects.

XX. STIPULATED PENALTIES

319. Premcor shall pay stipulated penalties to the United States or the appropriate Plaintiff-Intervener, where appropriate, for each failure by Premcor to comply with the terms of this Addendum; provided, however, that the United States or the appropriate Plaintiff-Intervener may elect to bring an action for contempt in lieu of seeking stipulated penalties for violations of this Addendum. For each violation, the amounts identified below shall apply on the first day of violation and shall be calculated for each incremental period of violation (or portion thereof). Stipulated penalties under subparagraphs 320(d) and 320(e) shall not start to accrue unless and until there is noncompliance with the concentration-based, rolling average emission limits identified in those paragraphs for 5% or more of the applicable unit's operating time during any calendar quarter. For those provisions where a stipulated penalty of either a fixed amount or 1.2 times the reasonable economic benefit of Premcor's delayed compliance is specifically identified below as available, the decision of which alternative to seek shall rest exclusively with the discretion of the United States and the appropriate Plaintiff-Intervener. In no event shall any penalty assessed against Premcor exceed the maximum civil penalty

that may be assessed under the Clean Air Act 42 U.S.C § 7413 for any individual violation of this Addendum.

320. The following provisions are not intended, nor shall be construed, to be duplicative. Instead, any action or omission by Premcor that constitutes noncompliance with this Addendum shall give rise to a single stipulated penalty, hereunder, assessable to Premcor, except to the extent that any stipulated penalty provision specifically provides for additional penalties for continuing violations.

a. Requirements for NO_x emission reductions from Covered Heaters and Boilers (Part IV):

- i. Failure to achieve the interim emission reduction goals in accordance with Section IV.B: \$100,000 per quarter.
- ii. Failure to achieve the final emission reduction goals in accordance with Section IV.C or IV.G: \$200,000 per quarter.

b. Failure to submit any written deliverable required under this Addendum:

Period of Delay	Penalty per Day
1 st day through 30 th day after deadline	\$200
31 st day through 60 th day after deadline	\$500
Beyond 60 th day after deadline	\$1,000

c. Failure to conduct any performance test, to install, calibrate and operate a CEMS or COMS or to establish PEMS operating parameters in accordance with Appendix S:

Period of Delay	Penalty per Day
1 st day through 30 th day after deadline	\$500
31 st day through 60 th day after deadline	\$1,000
Beyond 60 th day after deadline	\$2,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater.

d. Requirements for NO_x emission reduction from FCCUs (Part V):

Failure to meet emission limits established pursuant to Part V: \$750 for each calendar day in a calendar quarter on which the specified 7-day rolling average exceeds the applicable limit; \$2,500 for each calendar day in a calendar quarter on which the specified 365-day rolling average exceeds the applicable limit.

e. Requirements for SO₂ emission reductions from FCCUs (Part VI):

i. Failure to meet final emission limits for the FCCU exhaust gas at each refinery:

\$750 for each calendar day in a calendar quarter on which the specified 7-day rolling average exceeds the applicable limit; \$2,500 for each calendar day in a calendar quarter on which the specified 365-day rolling average exceeds the applicable limit.

ii. For failure to comply with any requirement of the SO₂ Reducing Catalyst Additives protocol, as set forth in Appendix E, including submission of the Demonstration Report, per unit, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$1,000
31 st through 60 th day after deadline	\$1,500
Beyond 60 th day after deadline	\$2,000 or an amount equal to 1.2 times the economic benefit of the delayed compliance, whichever is greater

- iii. For failure to comply with the plan required by Paragraph 85 for operating the FCCUs in the event of a Hydrotreater Outage, per unit, per day:

<u>Period of Delay</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$250
31 st through 60 th day after deadline	\$1,000
Beyond 60 th day after deadline	\$2,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

- f. Requirements for CO and particulate emissions controls for FCCUs (Part VII):
- Failure to comply with CO emission limit: \$750 for each calendar day in a calendar quarter on which the specified 1-hour average exceeds the applicable limit.
 - Failure to comply with particulate emission limit: \$3,000 for each calendar day in a calendar quarter on which the Refinery exceeds the specified limit.
- g. Requirements for NSPS applicability to FCCU regenerators (Part VIII):
- Failure to comply with NSPS emission limits, as required by Part VIII. per day per emission limit per emission point.

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day	\$2,500
Beyond 31 st day	\$5,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

- For burning Fuel Oil in a manner inconsistent with the requirements of Paragraphs 113 and 114 per unit, per day:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day	\$1,750
Beyond 31 st day	\$5,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

- iii. For failure to comply with the NSPS Subpart J emission limits under Paragraphs 221 or 222 per unit, per day in a calendar quarter:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day	\$1,000
31 st through 60 th day	\$2,000
Over 60 days	\$3,000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

- iv. For failure to eliminate, control, and/or include and monitor all sulfur pit emissions in accordance with the requirements of Paragraph 226 , per unit, per day:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day	\$1,000
31 st through 60 th day	\$1,750
Beyond 60 th day	\$4,000 or an amount equal to 1.2 times the economic benefit of delayed compliance whichever is greater

- v. For failure to comply with the Preventive Maintenance and Operation Plan under Paragraph 229 per refinery, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$500
31 st through 60 th day	\$1,500
Over 60 days	\$2,000

- vi. Each rolling 12-hour average of sulfur dioxide emissions from any SRP in excess of the limitation at 40 C.F.R. § 60.104(a)(2)(i) that is not attributable to Startup, Shutdown, or Malfunction of the SRP, or that is not attributable to Malfunction of the associated TGTU:

Number of rolling 12-hr average exceedances within calendar day	Penalty per rolling 12-hr average exceedance
1 – 12	\$350
Over 12	\$750

- vii. Operation of the SRP during Scheduled Maintenance of its associated TGTU (except that this paragraph shall not apply during periods in which Premcor is engaged in the Shutdown of an SRP for, or Startup of an SRP following, Scheduled Maintenance of the SRP): \$25,000 per SRP per day per refinery.

h. Requirements for Benzene Waste NESHAP program enhancements (Part X):

- i. Failure to timely conduct audit or compliance review and verification under Section X.C and X.G: \$7,500 per month per review/audit.
- ii. Failure to timely sample under Section X.K: \$250 per week, per stream or \$15,000 per quarter, per stream (whichever amount is greater, but not to exceed \$75,000 per refinery per quarter).
- iii. Failure to timely install carbon canister under Section X.E: \$1,000 per day per canister.

- iv. Failure to timely replace carbon canister under Section X.E: \$1,000 per day per canister
- v. Failure to perform monitoring under Section X.L: \$500 per monitoring event.
- vi. Failure to develop and timely implement training program under Section X.I: \$10,000 per quarter per refinery
- vii. Failure to mark segregated stormwater drains under Section X.L: \$1,000 per week per drain
- viii. If it is discovered by an EPA or state investigator or inspector, or their agent, that Premcor failed to include all benzene waste streams in its TAB, for each waste stream that is:
 - Less than 0.03 Mg/yr - \$250 per stream;
 - Between 0.03 and 0.1 Mg/yr - \$1,000 per stream;
 - Between 0.1 Mg/yr and 0.5 Mg/yr - \$5,000 per stream;
 - Greater than .5 Mg/yr - \$10,000 per stream.
- i. Requirements for Leak Detection and Repair program enhancements (Part XI):
 - i. Failure to have written LDAR program under Section XI.B: \$3,500 per week.
 - ii. Failure to implement the training program under Section XI.C: \$10,000 per month, per program.
 - iii. Failure to timely conduct internal or external audit under Section XI.D: \$5,000 per month per audit.
 - iv. Failure to timely implement internal leak definition under Section XI.G: \$10,000 per month per process unit.
 - v. Failure to develop and timely implement initial attempt at repair program under Section XI.I: \$10,000 per month.

- vi. Failure to implement and begin more frequent monitoring program under Section XI.J: \$10,000 per month per process unit.
- vii. Failure to timely monitor under Section XI.J: \$10,000 per week per process unit.
- viii. Failure to have dataloggers and electronic storage under Section XI.K: \$5,000 per month per refinery.
- ix. Failure to timely establish LDAR accountability under Section XI.M: \$3,750 per week per refinery.
- x. Failure to establish new equipment standards under Section XI.N: \$1,000 per month.
- xi. Failure to conduct calibration drift assessment or to remonitor components (if and as required) under Section XI.O: \$100 per missed event per day per refinery.
- xii. Failure to attempt the drill and tap method under Section XI.Q: \$5,000 per component.
- xiii. For failure to comply with the requirement for chronic leakers set forth in Paragraph 212 : \$5,000 per valve.
- xiv. If it is discovered by an EPA or state investigator or inspector, or their agent, that Premcor failed to include all required components in its LDAR program: \$87.50 per component.

j. Requirements for Permitting (Part XIV):

Failure to timely submit a reasonably or administratively complete permit application:

<u>Period of Delay</u>	<u>Penalty per Day</u>
Days 1-30	\$800
Days 31-60	\$1,500

Over 60 days \$3,000

k. Requirements for Supplemental/Beneficial Environmental Projects (Part IX):

For Failure to timely complete implementation of the projects required by Part IX:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$1,000
31 st through 60 th day after deadline	\$1,500
Beyond 60 th day after deadline	\$2,000.

l. Reserved.

m. Requirement to Escrow Stipulated Penalties: Failure to escrow stipulated penalties, as required by Paragraph 322 of this Part: \$1,250 per day, and interest on the amount overdue at the rate specified in 28 U.S.C. § 1961(a).

n. As to any failure to complete an obligation pursuant to this Addendum that does not otherwise have a specified stipulated penalty, the United States, relevant Plaintiff-Intervener and Premcor may reach agreement on a stipulated penalty amount and such agreed stipulated penalty may be assessed and paid pursuant to this Part XX.

o. For failure to perform a CERCLA/EPCRA Compliance Review, submit a CERCLA/EPCRA Compliance Review Report, or perform corrective actions, as required by Paragraph 241a, per refinery:

<u>Period of Non-Compliance</u>	<u>Penalty per day</u>
1 st through 30 th day after deadline	\$500
31 st through 60 th day after deadline	\$1,500
Beyond 60 th day after deadline	\$3,000

321. Premcor shall pay such stipulated penalties upon written demand by the United States or the appropriate Plaintiff-Intervener no later than sixty (60) days after Defendant receives such demand. Demand from either the United States or the appropriate Plaintiff-Intervener shall be deemed

a demand from both, but the United States and the appropriate Plaintiff-Intervener shall consult with each other prior to making a demand. Stipulated penalties owed by Premcor shall be paid 50% to the United States and 50% to the appropriate Plaintiff-Intervener. Stipulated penalties shall be paid in the manner set forth in Part XVII unless the payment to the United States is less than \$10,000, in which case such payment shall be certified or company check, payable to the appropriate United States Attorneys Office. A demand for the payment of stipulated penalties will identify the particular violation(s) to which it relates, the amounts demanded for each violation (as can be best estimated), the calculation method underlying the demand and the grounds upon which the demand is based. After consultation with each other, the United States and the appropriate Plaintiff-Intervener may, in their unreviewable discretion, waive payment of any portion of stipulated penalties that may accrue under this Addendum. Where a single event triggers more than one stipulated penalty provision in this Addendum, only one such provision will apply.

322. Should Premcor dispute its obligation to pay part or all of a stipulated penalty, it may avoid the imposition of the stipulated penalty for failure to pay a penalty due to the United States or the appropriate Plaintiff-Intervener, by placing the disputed amount demanded by the United States or the Plaintiff-Intervener in a commercial escrow account pending resolution of the matter and by invoking the Dispute Resolution provisions of Part XXIII within the time provided in Paragraph 321 for payment of stipulated penalties. If the dispute is thereafter resolved in Premcor's favor, the escrowed amount plus accrued interest shall be returned to Premcor, otherwise the United States or the appropriate Plaintiff-Intervener shall be entitled to the escrowed amount that was determined to be due by the Court plus the interest that has accrued on such amount, with the balance, if any, returned to Premcor.

323. Nothing in this Addendum shall prevent the United States or the appropriate Plaintiff-Intervener from pursuing a contempt action against Premcor in lieu of demanding stipulated penalties hereunder and requesting that the Court order specific performances of the terms of this Addendum.

Nothing in this Addendum authorizes the appropriate Plaintiff-Intervener to take action or make any determinations under this Addendum regarding Premcor refineries that are outside that Plaintiff-Intervener's state or that are not subject to this Addendum.

324. The United States and the appropriate Plaintiff-Intervener reserve the right to pursue any other non-monetary remedies to which they are legally entitled, including but not limited to injunctive relief for violations of the Addendum. Where a violation of this Addendum is also a violation of the Clean Air Act, its regulations or federally enforceable state law, regulation or permit, the United States (or the appropriate Plaintiff-Intervener) will not seek civil penalties where it already has demanded and secured stipulated penalties for the same act or omission, nor will the United States (or the appropriate Plaintiff-Intervener) demand stipulated penalties for a violation of the Addendum if it has commenced litigation under the Clean Air Act for the same acts or omissions. Where a violation of this Addendum is also a violation of state law, regulation or a permit, the Plaintiff-Interveners will not seek civil or administrative penalties where they have already demanded and secured stipulated penalties for the same acts or omissions, nor will the Plaintiff-Interveners demand stipulated penalties for a violation of the Addendum if it has commenced litigation under the Clean Air Act for the same acts or omissions.

XXI. RIGHT OF ENTRY

325. Any authorized representative of EPA or a Plaintiff-Intervener, including their independent contractors, upon presentation of credentials, shall have a right of entry upon the premises of the Premcor Refineries at any reasonable time for the purpose of monitoring compliance with the provisions of this Addendum, including inspecting plant equipment, and inspecting and copying all records maintained as required by this Addendum. Nothing in this Addendum shall limit the authority of EPA to conduct tests and inspections under Section 114 of the Clean Air Act, 42 U.S.C. § 7414, or any other statutory or regulatory provision.

XXII. FORCE MAJEURE

326. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Addendum (e.g. would require operation in an unsafe manner), and which Premcor believes qualifies as an event of force majeure, Premcor shall notify the United States and Plaintiff-Intervener in writing as soon as practicable, but in any event within forty-five (45) business days of when Premcor first knew of the event or should have known of the event by the exercise of due diligence. In this notice Premcor shall specifically reference this paragraph of this Addendum and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by Premcor to prevent or minimize the delay and the schedule by which those measures will be implemented. Premcor shall adopt all reasonable measures to avoid or minimize such delays.

327. Failure by Premcor to substantially comply with the notice requirements of Paragraph 326, as specified above, shall render this Part voidable by the United States, after an opportunity for consultations with the Plaintiff-Intervener, as to the specific event for which Premcor has failed to comply with such notice requirement. If so voided, it shall be of no effect as to the particular event involved.

328. The United States, after an opportunity for consultation with the Plaintiff-Intervener, shall notify Premcor in writing regarding their claim of a delay or impediment to performance within forty-five (45) business days of receipt of the Force Majeure notice provided under Paragraph 326.

329. If the United States, after an opportunity for consultation with the Plaintiff-Intervener, agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Premcor including any entity controlled or contracted by it, and that it could not have prevented the delay by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline(s) for all requirement(s) affected by the delay by a period equivalent to the delay actually caused by such circumstances, or such other period as may be appropriate in light of the

circumstances. Such stipulation may be filed as a modification to this Addendum by agreement of the parties pursuant to the modification procedures established in this Addendum. Premcor shall not be liable for stipulated penalties for the period of any such delay.

330. If the United States and appropriate Plaintiff-Intervener do not accept Premcor's claim of a delay or impediment to performance or Event of Force Majeure pursuant to this Addendum, then Premcor must submit the matter to this Court for resolution to avoid payment of stipulated penalties, by filing a petition for determination with this Court. In the event that the United States and Plaintiff-Intervener do not agree, the position of the United States on the Force Majeure claim shall become the final Plaintiffs' position. Once Premcor has submitted this matter to this Court, the United States and appropriate Plaintiff-Intervener shall have twenty (20) business days to file a response to the petition. If Premcor submits the matter to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the control of Premcor, including any entity controlled or contracted by it, and that it could not have prevented the delay by the exercise of due diligence, Premcor shall be excused as to that event(s) and delay (including stipulated penalties) for all requirements affected by the delay for a period of time equivalent to the delay caused by such circumstances or such other period as may be determined by the Court.

331. Premcor shall bear the burden of proving that any delay of any requirement(s) of this Addendum was caused by or will be caused by circumstances beyond its control, including any entity controlled or contracted by it, and that it could not have prevented the delay by the exercise of due diligence. Premcor shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances. An extension of one compliance date based on a particular event may, but does not necessarily, result in an extension of a subsequent compliance date or dates. Unanticipated or increased costs or expenses associated with the performance of obligations under this Addendum shall not constitute circumstances beyond the control of Premcor.

332. Notwithstanding any other provision of this Addendum, this Court shall not draw any inferences nor establish any presumptions adverse to any party as a result of Premcor delivering a notice of Force Majeure or the parties' inability to reach agreement.

333. As part of the resolution of any matter submitted to this Court under this Part, the parties by agreement, or this Court by order, may in appropriate circumstances extend or modify the schedule for completion of work under this Addendum to account for the delay in the work that occurred as a result of any delay or impediment to performance agreed to by the United States and the appropriate Plaintiff-Intervener or approved by this Court. Premcor shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, except to the extent that such schedule is further modified, extended or otherwise affected by a subsequent force majeure event under this Part XXII.

XXIII. DISPUTE RESOLUTION

334. The dispute resolution procedure provided by this Part shall be available to resolve all disputes arising under this Addendum, except as otherwise provided in Part XXII regarding Force Majeure, provided that the party making such application has made a good faith attempt to resolve the matter with the other party.

335. The dispute resolution procedure required herein shall be invoked upon the giving of written notice by one of the parties to this Addendum to another advising of a dispute pursuant to this Part. The notice shall describe the nature of the dispute, and shall state the noticing party's position with regard to such dispute. The party or parties receiving such a notice shall acknowledge receipt of the notice and the parties shall expeditiously schedule a meeting to discuss the dispute informally not later than fourteen (14) days from the receipt of such notice.

336. Disputes submitted to dispute resolution shall, in the first instance, be the subject of informal negotiations between the parties. Such period of informal negotiations shall not extend beyond thirty (30) calendar days from the date of the first meeting between representatives of the

United States, the appropriate Plaintiff-Intervener and Premcor, unless the parties' representatives agree to shorten or extend this period.

337. In the event that the parties are unable to reach agreement during such informal negotiation period, the United States and the appropriate Plaintiff-Intervener shall provide Premcor with a written summary of their collective position regarding the dispute. The position advanced by the United States and Plaintiff-Intervener shall be considered binding unless, within forty-five (45) calendar days of Premcor's receipt of the written summary of the United States and Plaintiff-Intervener's position, Premcor files with this Court a petition which describes the nature of the dispute. The United States shall respond to the petition within forty-five (45) calendar days of filing.

338. In the event the United States and the Plaintiff-Intervener make differing determinations or take differing actions that affect Premcor's rights or obligations under this Addendum, then as between the United States and the Plaintiff-Intervener the determination or action of the United States shall control.

339. Where the nature of the dispute is such that a more timely resolution of the issue is required, the time periods set out in this Part may be shortened upon motion of one of the parties to the dispute.

340. Notwithstanding any other provision of this Addendum, in dispute resolution, this Court shall neither draw any inferences nor establish any presumptions adverse to either party as a result of invocation of this Part or the parties' inability to reach agreement.

341. As part of the resolution of any dispute submitted to dispute resolution, the parties by agreement, or this Court by order, in appropriate circumstances, may extend or modify the schedule for completion of work under this Addendum to account for the delay in the work that occurred as a result of dispute resolution. Premcor shall be liable for stipulated penalties for its failure thereafter to complete the work in accordance with the extended or modified schedule, subject to the Force Majeure provisions of Part XXII.

XXIV. EFFECT OF SETTLEMENT

342. This Addendum is not a permit; except as otherwise provided herein, compliance with its terms does not ensure compliance with any applicable federal, state or local laws or regulations governing air quality permitting requirements. Except as otherwise expressly provided herein, nothing in this Addendum shall be construed to be a ruling on, or determination of, any issue related to any Federal, state or local permit.

343. Definitions. For purposes of this Part XXIV (Effect of Settlement), the following definitions apply:

a. “Applicable NSR/PSD Requirements” shall mean: PSD requirements at Part C of Subchapter I of the Act, 42 U.S.C. § 7475, and the regulations promulgated thereunder at 40 C.F.R. §§ 52.21 and 51.166; the portions of the applicable SIPs and related rules adopted as required by 40 C.F.R. §§ 51.165 and 51.166; “Plan Requirements for Non-Attainment Areas” at Part D of Subchapter I of the Act, 42 U.S.C. §§ 7502-7503, and the regulations promulgated thereunder at 40 C.F.R. §§ 51.165 (a) and (b), 40 C.F.R. Part 51, Appendix S, and 40 C.F.R. § 52.24; Title V regulations or permit provisions that implement, adopt or incorporate the specific regulatory requirements identified above; and state or local regulations or permits that implement, adopt, or incorporate the specific federal regulatory requirements identified above.

b. “Applicable NSPS Subparts A and J Requirements” shall mean the standards, monitoring, testing, reporting and recordkeeping requirements, found at 40 C.F.R. §§ 60.100 through 60.109 (Subpart J), relating to a particular pollutant and a particular affected facility, and the corollary general requirements found at 40 C.F.R. §§ 60.1 through 60.19 (Subpart A) that are applicable to any affected facility covered by Subpart J; any Title V regulations that implement, adopt or incorporate the specific regulatory requirements identified above; any applicable, federally-enforceable state or local regulations that implement, adopt, or incorporate the specific federal regulatory requirements identified above, and any Title V permit provisions that implement, adopt or incorporate the specific regulatory

requirements identified above; and any applicable state or local regulations, or permits enforceable by Plaintiff-Interveners that implement, adopt, or incorporate the specific federal regulatory requirements identified above.

c. "Post-Lodging Compliance Dates" shall mean any dates after the Date of Lodging provided in the relevant sections of this Addendum. Post-Lodging Compliance Dates include dates certain (e.g., "December 31, 2004"), dates after Lodging represented in terms of "months after Lodging" (e.g., "Twelve Months after the Date of Lodging"), and dates after Lodging represented by actions taken (e.g., "Date of Certification"). The Post-Lodging Compliance Dates represent the dates by which work is required to be completed or an emission limit is required to be met under the applicable provisions of this Addendum.

344. **Resolution of Liability Regarding the Applicable NSR/PSD Requirements.** With respect to emissions of the following pollutants from the following units, entry of this Addendum shall resolve all civil liability for violations of the Applicable NSR/PSD Requirements resulting from pre-Lodging construction or modification:

- A. Emissions of SO₂ from the FCCUs at the Premcor Refineries.
- B. Emissions of NO_x from the FCCUs at the Premcor Refineries.
- C. Emission of NO_x and SO₂ from all heaters and boilers at the Premcor Refineries.

345. **Resolution of Liability for PM Emissions Under the Applicable NSR/PSD Requirements.** With respect to emissions of PM from the FCCUs at the Premcor Refineries, when Premcor accepts an emission limit of 0.5 pound PM per 1000 pounds of coke burned (front half only according to Method 5B or 5F, as appropriate) on a 3-hour average basis and demonstrates compliance by conducting a 3-hour performance test representative of normal operating conditions for PM emissions at a particular Refinery, then all civil liability shall be resolved for violations of the Applicable NSR/PSD Requirements relating to PM emissions at the relevant Refinery resulting from pre-Lodging construction or modification of the FCCU at that Refinery.

346. **Resolution of Liability for CO Emissions Under the Applicable NSR/PSD**

Requirements. With respect to emissions of CO from the FCCUs at the Premcor Refineries, if and when Premcor accepts an emission limit of 100 ppmvd of CO at 0% O₂ on a 365-day rolling average basis and demonstrates compliance using CEMS at the relevant Refinery, then all civil liability shall be resolved for violations of the Applicable NSR/PSD Requirements relating to CO emissions at the relevant Refinery resulting from pre-Lodging construction or modification of the FCCU for that Refinery.

347. Reserved.

348. **Exclusions from Release Coverage Regarding Applicable NSR/PSD Requirements:**

Notwithstanding the resolution of liability in Paragraphs 345-346, nothing in this Addendum precludes the United States and/or the Plaintiff-Interveners from seeking from Premcor injunctive relief, penalties, or other appropriate relief for violations by Premcor of the Applicable NSR/PSD Requirements resulting from: (1) construction or modification that commenced prior to the Date of Lodging of the Addendum, if the resulting violations relate to pollutants or units not covered by the Addendum; or (2) any construction or modification that commences after the Date of Lodging of the Addendum.

349. **Exclusions from Resolution of Liability Under Applicable PSD/NSR**

Requirements. Increases in emissions from units covered by this Addendum, where the increases result from the Post-Lodging construction or modification as defined by 40 C.F.R 52.21 of any units within the Premcor Refineries are beyond the scope of the release in Paragraphs 345-346.

350. **Resolution of Liability Regarding Matters on Appendices Q, R, and T.** With respect to the enforcement matters identified in Appendix Q and Appendix R, and with respect to the emission events listed in Appendix T, entry of this Addendum shall resolve all civil liability for the violations identified, alleged or resolved in Appendix Q and Appendix R, and for the emission events

listed in Appendix T, in the manner and to the extent set forth therein, from the date that the claims accrued up to the relevant Post-Lodging Compliance Dates.

351. **Resolution of Liability Regarding Applicable NSPS Subparts A and J**

Requirements. With respect to Opacity and emissions of SOx, PM, and CO, as applicable, from all heaters and boilers, SRPs, fuel gas combustion devices, and the FCCUs at the Premcor Refineries, entry of this Addendum shall resolve all civil liability for pre-Lodging violations of the Applicable NSPS Subparts A and J Requirements from the date that the claims accrued up to the relevant Post-Lodging Compliance Dates.

352. **Prior NSPS Applicability Determinations.** Nothing in this Addendum shall affect the status of any FCCU, heater or boiler, fuel gas combustion device, or sulfur recovery plant currently subject to NSPS as previously determined by any federal, state, or local authority or any applicable permit.

353. **Resolution of Liability Regarding Benzene Waste NESHAP Requirements.** Entry of this Addendum shall resolve all civil liability for violations of the statutory and regulatory requirements set forth below in subparagraphs i. through iii. (the “BWON Requirements”) that (1) commenced and ceased prior to the Date of Entry of the Addendum; and (2) commenced prior to the Date of Entry of the Addendum and/or continued past the Date of Entry, provided that the events giving rise to such violations are identified by Premcor in its BWON Compliance Review and Verification Report(s) submitted pursuant to Paragraphs 127 and 128 and corrected by Premcor, as required under section X.D.:

i. **Benzene Waste NESHAP.** The National Emission Standard for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF, promulgated pursuant to Section 112(e) of the Act, 42 U.S.C. § 7412(e), including any federal regulation or permit that adopts or incorporates the requirements of Subpart FF by express reference, but only to the extent of such adoption or incorporation; and

ii. Any applicable, federally-enforceable state or local regulations or permits that implement, adopt, or incorporate the specific federal regulatory requirements identified in Paragraph 353.i.

iii. Any applicable state or local regulations or permits enforceable by the Plaintiff-Intervenors that implement, adopt, or incorporate the specific federal regulatory requirements identified in Paragraph 353.i.

354. **Resolution of Liability Regarding LDAR Requirements.** Entry of this Addendum shall resolve all civil liability for violations of the statutory and regulatory requirements set forth below in subparagraphs a. through c. that (1) commenced and ceased prior to the Date of Entry of the Addendum; and (2) commenced prior to the Date of Entry of the Addendum and continued past the Date of Entry, provided that the events giving rise to such violations are identified by Premcor in its Initial Audit Report(s) submitted pursuant to Paragraph 188 and corrected by Premcor as required under Paragraph 192:

a. **LDAR Requirements.** For all equipment in light liquid service and gas and/or vapor service, the LDAR requirements of Plaintiff-Intervenors under state implementation plans adopted pursuant to the Clean Air Act or promulgated by EPA pursuant to Sections 111 and 112 of the Clean Air Act, and codified at 40 C.F.R. Part 60, Subparts VV and GGG; 40 C.F.R. Part 61, Subparts J and V; and 40 C.F.R. Part 63, Subparts F, H, and CC;

b. Any applicable, federally-enforceable state or local regulations or permits that implement, adopt, or incorporate the specific regulatory requirements identified in Paragraph 354.a.

c. Any applicable state or local regulations or permits enforceable by the Plaintiff-Intervenors that implement, adopt, or incorporate the specific regulatory requirements identified in Paragraph 354.a.

354A. **Resolution of Other Enforcement Matters.** In addition to the foregoing matters, this Addendum resolves, settles, and finally satisfies claims against Premcor asserted by or available to the

United States and/or Plaintiff-Interveners to the extent specifically listed in Appendix Q, R, and T hereto. Entry of this Addendum shall resolve all civil and administrative liability of Premcor for the matters set forth in Appendix Q, R, and T in the manner and to the extent set forth therein.

355. **Reservation of Rights Regarding Benzene NESHAP and LDAR Requirements.**

Notwithstanding the resolution of liability in Paragraphs 353 and 354, nothing in this Addendum precludes the United States and/or the Plaintiff-Interveners from seeking from Premcor injunctive and/or other equitable relief or civil penalties for violations by Premcor of Benzene Waste NESHAP and/or LDAR requirements that (1) commenced prior to the Date of Entry of this Addendum and continued after the Date of Entry if Premcor fails to identify and address such violations as required by Paragraphs 127, 128, 188, 192 and/or section X.D of this Addendum; or (2) commenced after the Date of Entry of the Addendum.

356. **Audit Policy.** Nothing in this Addendum is intended to limit or disqualify Premcor on the grounds that information was not discovered and supplied voluntarily, from seeking to apply EPA's Audit Policy or any state or local audit policy to any violations or non-compliance that Premcor discovers during the course of any investigation, audit, or enhanced monitoring that Premcor is required to undertake pursuant to this Addendum.

357. **Claim/Issue Preclusion.** In any subsequent administrative or judicial proceeding initiated by the United States or the Plaintiff-Interveners for injunctive relief, penalties, or other appropriate relief relating to Premcor for violations of the PSD/NSR, NSPS, NESHAP, and/or LDAR requirements, not identified in Part XXIV (Effect of Settlement) of the Addendum and/or the Complaint:

a. Premcor shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-splitting as a result of this Addendum. Nor may Premcor assert or maintain any other defenses based upon any contention that the claims raised by the United States or the Plaintiff-Interveners in the subsequent proceeding

were or should have been brought in the instant case. Nothing in the preceding sentences is intended to affect the ability of Premcor to assert that the claims are deemed resolved by virtue of Part XXIII of the Addendum.

b. Except in enforcing Paragraph 357.a. the United States and the Plaintiff-Intervenors may not assert or maintain that this Addendum constitutes a waiver or determination of, or otherwise obviates, any claim or defense whatsoever of Premcor, or that this Addendum constitutes acceptance by Premcor of any interpretation or guidance issued by EPA related to the matters addressed in this Addendum.

357A. Nothing in this Addendum is intended to limit any rights, claims or defenses otherwise legally available to Premcor in response to a claim or allegation by any person not a party to this Addendum. Without limitation to the foregoing, Premcor expressly reserves the right to respond to any allegation by any person that Premcor is or has violated any provision of applicable law at a refinery governed by this Addendum, including by asserting that such alleged violations have been resolved or otherwise addressed by this Addendum, that principals of preemption, waiver, res judicata, claim preclusion, or issue preclusion bar such claim, or that Premcor is entitled to a set off against any liability for such claim in the form of civil or administrative penalties, injunctive relief or any other remedy as a result of the civil penalty payments, stipulated penalty payments, implementation of supplemental environmental projects and/or emission control projects, standards or limitation undertaken by Premcor under this Addendum.

358. **Imminent and Substantial Endangerment.** Nothing in this Addendum shall be construed to limit the authority of the United States and the Plaintiff-Intervenors to undertake any action against any person, including Premcor to abate or correct conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment, or limit the authority of a Plaintiff-Intervenor to take action under similar circumstances under state statute or common law that may be necessary to protect the public health, safety, welfare and the environment.